

AG Contract No.: KR04-1403TRN
ADOT ECS File No.: JPA 04-056
Project No.: TEA-180-A-(004)-A
Section: US 180
Project: Forest Ave – Sechrist
Elementary
TRACS No.: H6334 01C
Budget Source Item No.: 75305

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF FLAGSTAFF

THIS AGREEMENT is entered into this date August 31, 2005, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF FLAGSTAFF, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

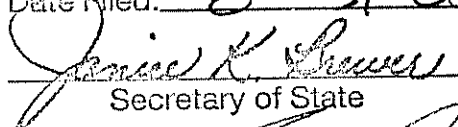

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of transportation enhancement activities.

4. The City has selected such Project within the boundary of the City; the survey of the Project has been completed and as required, submitted to the State and the Federal Highway Administration (FHWA) for its approval.

5. The State and the City desire to participate in the design, construction and maintenance of a 10' wide Multi-use pathway, signage and retaining walls on the West side of US 180 from the Sechrist Elementary School to West Navajo Road, hereinafter referred to as the "Project". The parties agree that the State shall design and construct and upon completion the City shall maintain the Project, at an estimated cost of \$746,900.00.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

NO. 27703
Filed with the Secretary of State
Date Filed: 8-31-05

Secretary of State
By: 

Construction TRACS No.: H6334 01C

Estimated Construction Cost	\$692,900.00
Estimated Federal-aid funds @ 94.3%	\$653,404.70
Estimated State funds @ 5.7%	<u>\$ 39,495.30</u>

Design TRACS No.: H6334 01D

Estimated Design Costs	\$ 54,000.00
Estimated Federal-aid funds @ 94.3%	\$ 50,922.00
Estimated State funds @ 5.7%	<u>\$ 3,078.00</u>

Total Estimated Design & Construction Costs: \$746,900.00

II. SCOPE OF WORK**1. The State shall:**

a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction.

b. Construct the Project approved by FHWA, if such funds are available for construction. Be the designated authorized agent with the consent of the City and the FHWA and proceed to advertise for and open bids with the aid and consent of the City and the FHWA. Enter into a contract(s) with a firm(s) to whom the award is made with the concurrence of the FHWA. Enter into a Project Agreement with FHWA on behalf of the City to perform, complete, accept and pay for in accordance with instruction and requirements of the City and the Arizona Department of Transportation. Request the maximum federal funds available including construction, engineering and administration costs.

c. Prepare plans, specifications and an estimate for the Project and shall submit them to the City for concurrence. After the City concurs with the plans, the Project shall be constructed by the State using State and Federal Funds.

d. Remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the project area and hereby certifies that all obstructions and encroachments have been or shall be removed prior to the start of Project construction. All costs of such removal are to be borne by the City.

e. Not be obligated to maintain this Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City shall:

a. Not permit or allow any encroachments, except those authorized by permit, upon or private use of the right-of-way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

b. Prior to the start of construction and upon receipt of an invoice, remit to the State for the cost incurred from Section II 1.d. above.

c. Upon completion and acceptance of the Project, provide for, at its own cost and as an annual item in its budget, perpetual and proper maintenance of the Project improvements. Maintenance shall consist of the care and good repair of all Project features listed above and keeping all areas in good repair, free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests. This Agreement may be assumed by another governmental entity under the same stipulations.

d. Be obligated to incur the cost increase of said work due to unforeseen conditions or circumstances required by a change in the extent or scope of work called for by the City in this Agreement. The City shall be obligated to incur any such increased cost by the City; any such changes require the prior written approval of the State.

e. Conduct all maintenance work in a manner to minimize traffic congestion and interference with through traffic. All traffic controls shall meet the requirements of the most recent Arizona Department of Transportation's "Uniform Traffic Control Manual."

III. MISCELLANEOUS PROVISIONS

1. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees), hereinafter collectively referred to as "claims", arising out of bodily injury of any person (including death) or property damage, or any other claims, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents employees or volunteers.

2. The terms, conditions and provisions of this Agreement shall remain in full force and effect until Project completion and until all reimbursements provided herein are made in full. However, any provisions for maintenance of the multi-use pathway, signage and retaining walls, provided by the City, shall be perpetual. This Agreement may be cancelled prior to the award of a Project construction contract, upon thirty-days (30) prior written notice to either party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project improvements.

3. In the event there are changes in the Scope of Work, extra work, or changes in the planned work covered by this Agreement, a modification to this Agreement in the form of the Construction Change Order issued by the State's Resident Engineer, signed by representatives for the parties hereto is required prior to the start of work on said changes or additions.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this contract.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
(602) 712-7525

City of Flagstaff
City Manager
211 W. Aspen Avenue
Flagstaff, AZ 86001
(928) 779-7660

9. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10. Non-Availability of Funds: Every payment obligation of the State and City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by either the State or the City at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised as a result of termination under this paragraph.

11. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF FLAGSTAFF

STATE OF ARIZONA
Department of Transportation

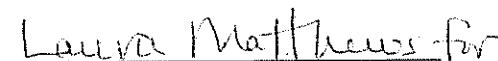
By 

JOE DONALDSON
Mayor

By 

SUSAN TELLEZ
Contract Administrator

ATTEST

By 


MARGIE BROWN
City Clerk

JPA 04-056

APPROVAL OF THE CITY OF FLAGSTAFF

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF FLAGSTAFF, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 11th day of July, 2005.


City Attorney

RESOLUTION NO. 2005-68

RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA ("STATE") AND THE CITY OF FLAGSTAFF ("CITY") FOR PARTICIPATION IN THE DESIGN, CONSTRUCTION AND MAINTENANCE OF A MULTI-USE PATHWAY LOCATED ON THE WEST SIDE OF US HIGHWAY 180 FROM SECHRIST ELEMENTARY SCHOOL TO WEST NAVAJO ROAD.

WHEREAS, Congress has authorized appropriations for, but not limited to, twelve (12) eligible categories of transportation enhancement projects through programs administered by the Federal Highway Administration ("FHWA"); and

WHEREAS, the City has selected such a project as a 10' wide multi-use pathway with signage and retaining walls ("Project") to be located within the City's jurisdictional boundaries on the west side of US Highway 180 from Sechrist Elementary School to West Navajo Road, and the City has submitted a survey of the Project to the FHWA and to the State for approval; and

WHEREAS, the State desires to participate with the City in the Project by submitting a program for the Project to the FHWA for funding approval, and by providing for the design and construction of the Project with said FHWA funding and with supplemental State funding; and

WHEREAS, the City desires to participate with the State in the Project by providing for the perpetual maintenance of all Project improvements upon Project completion; and

WHEREAS, the City and the State desire to enter into an intergovernmental agreement ("IGA") providing for the responsibilities of the City and the State in their participation in the Project; and

WHEREAS, the Flagstaff Metropolitan Planning Organization and the State's Department of Transportation desire to obtain City Council approval for the City's entry into the IGA; and

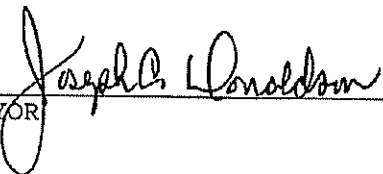
WHEREAS, the City and the State are authorized by Arizona Revised Statutes §§ 11-951 through 954, 48-572 and 28-401, to enter into the IGA; and

WHEREAS, the City Council has reviewed the proposed IGA and finds that it is in the best interests of the City to enter into the IGA with the State.

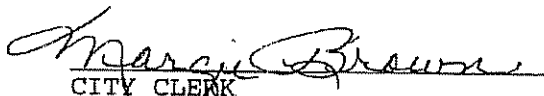
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That the Intergovernmental Agreement between the City and the State submitted as an attachment to the Staff Summary Report in support hereof, be hereby approved, and the Mayor be authorized and directed to execute the Intergovernmental Agreement on behalf of the City of Flagstaff.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 21st day of June, 2005.

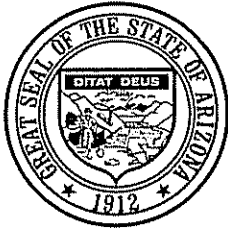

MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION
MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: 602-542-8859
Fax: 602-542-3646


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-1403TRN (JPA 04-056), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED August 29, 2005.

TERRY GODDARD
Attorney General


JEFFREY T. MURRAY
Assistant Attorney General
Transportation Section

SED:dgr
Attachment
921388